

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MASONRY INSTITUTE, BRICKLAYERS)	
LOCAL 21 PENSION FUND, DISTRICT)	
COUNCIL TRAINING CENTER FUND,)	
AND BRICKLAYERS AND STONE)	
MASONS OF ILLINOIS DISTRICT COUN-)	
CIL NO. 1 B.A.C. ANNUITY TRUST FUND,)	No. 08C 3897
)	
Plaintiffs,)	Judge Leinenweber
v.)	
)	Mag. Judge Cox
CAPEK & SONS, INC., an Illinois Corpora-)	
tion,)	
)	
Defendant.)	

MOTION FOR DEFAULT JUDGMENT

NOW COME the Plaintiffs and move this Honorable Court to enter a default judgment on behalf of the Plaintiffs and against Defendant, CAPEK & SONS, INC., an Illinois Corp., the grounds that the Defendant has failed to answer or otherwise defend to the Complaint of the Plaintiffs, a copy of which is attached hereto as Exhibit "A". Said Defendant was served on July 29, 2008, as more fully appears from the Affidavit of Service, a copy of which is attached hereto as Exhibit "B".

WHEREFORE, Plaintiffs request the following relief:

1. That default judgment be entered against the Defendant herein, CAPEK & SONS, INC., an Illinois Corporation, and that the Complaint filed herein be taken as confessed.
2. That judgment be entered forthwith against the Defendant, and in favor of Plaintiffs for the period January 1, 2005, through September 30, 2007, in the amount of \$70,368.67.

3. That an order be entered forthwith against the Defendant and in favor of Plaintiffs for production of books and records for the period September 30, 2007, through July 31, 2008, and to pay to Plaintiffs the amount found due and owing in accordance with the applicable provisions of its collective bargaining agreement.

4. That interest and/or liquidated damages be assessed against the Defendant as provided in the Collective Bargaining Agreement and the applicable provisions of the Pension Reform Act.

5. That the Defendant be ordered to comply with and perform according to the terms and conditions of its Collective Bargaining Agreement and the applicable provisions of ERISA as amended.

6. For such other and further relief as the Court may deem just and proper, including reasonable attorney's fees and court costs which are sustained.

/s/ Robert B. Greenberg
Asher, Gittler, Greenfield & D'Alba, Ltd.
200 West Jackson Boulevard
Suite 1900
Chicago, Illinois 60606
(312) 263-1500
IL ARDC#: 01047558

Dated: September 3, 2008

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MASONRY INSTITUTE, BRICKLAYERS LOCAL 21 PENSION FUND, DISTRICT COUNCIL TRAINING CENTER FUND, AND BRICKLAYERS AND STONE MASONS OF ILLINOIS DISTRICT COUN- CIL NO. 1 B.A.C. ANNUITY TRUST FUND,)	FILED: JULY 9, 2008
)	08CV3897
)	JUDGE LEINENWEBER
)	MAGISTRATE JUDGE COX
)	
Plaintiffs,)	PH
v.)	
)	
CAPEK & SONS, INC., an Illinois Corpora- tion,)	
)	
Defendant.)	

COMPLAINT

Plaintiffs, MASONRY INSTITUTE, BRICKLAYERS LOCAL 21 PENSION FUND, DISTRICT COUNCIL TRAINING CENTER FUND, AND BRICKLAYERS AND STONE MASONS OF ILLINOIS DISTRICT COUNCIL NO. 1 B.A.C. ANNUITY TRUST FUND, by and through their attorney, Robert B. Greenberg, of Asher, Gittler, Greenfield & D'Alba, Ltd., and complaining of Defendant, CAPEK & SONS, INC., an Illinois Corporation, allege as follows:

1. This action is brought under the provisions of Sections 502(g)(2), (a)(3), and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132(g)(2), (a)(3), and 1145.

2. Jurisdiction in this Court is based upon Sections 502(e)(1) and 502(e)(2) of ERISA, 29 U.S.C. §§ 1132(e)(1) and (e)(2). Section 502(e)(2) states in relevant part:

Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place,

or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

3. The MASONRY INSTITUTE, BRICKLAYERS LOCAL 21 PENSION FUND, DISTRICT COUNCIL TRAINING CENTER FUND, AND BRICKLAYERS & STONE MASONS OF ILLINOIS DISTRICT COUNCIL NO. 1 B.A.C. ANNUITY TRUST FUND, ("Funds") receive contributions from numerous employers pursuant to collective bargaining agreements heretofore entered into between District Council No. 1 of the International Union of Bricklayers and Allied Craftsmen ("Union") and Defendant, and the Funds are maintained and administered in accordance with and pursuant to the provisions of Section 302(c)(5) of the National Labor Relations Act, as amended, ERISA and other applicable federal law and the Funds are administered pursuant to the terms and provisions of a certain Restated Agreement and Declaration of Trust ("Trust Agreement").

4. The Fund office is located at 2340 South River Road, Suite 303, Des Plaines, Illinois 60018-3224, and the Funds are administered in the Northern District of Illinois.

5. As provided in the Trust Agreement, Plaintiffs are required to receive, hold and manage all monies required to be contributed to the Funds in accordance with the provisions of the then applicable Collective Bargaining Agreement for the uses and purposes set forth in the Trust Agreement.

6. Defendant is an employer engaged in an industry affecting commerce and maintains its principal place of business at 12332 Harold Avenue, Palos Heights IL 60463.

7. Defendant employs or has employed persons represented for collective bargaining purposes by the Union and agreed to be bound by the Collective Bargaining Agreement or agreements referred to herein, by the terms of which Defendant was required to contribute to the Funds.

8. Plaintiffs are advised and believe that Defendant has repeatedly failed to submit accurate contribution reports and the required payments thereon to the Funds

pursuant to the terms of the Collective Bargaining Agreement by which it was bound, all in violation of its contractual obligations and its obligations under applicable federal statutes.

9. As a result of the above-described omissions and breaches of agreement by Defendant, Plaintiffs may be required to (a) deny the employee beneficiaries for whom contributions have not been made the benefits provided under the benefit plan, thereby causing to such employee beneficiaries substantial and irreparable damage, or (b) to provide to employees of Defendant the benefits provided under the benefit plan, notwithstanding Defendant's failure to make the required contributions thereto, thereby reducing the corpus of such Funds and endangering the rights of the employee beneficiaries thereunder on whose behalf contributions are being made, all to their substantial and irreparable injury.

10. Plaintiffs, in their behalf, and on behalf of all employees for whose benefit the Funds were established, have requested Defendant to perform its obligations, but Defendant has refused and failed to perform as herein alleged.

11. Plaintiffs are without an adequate remedy at law and will suffer immediate, continuing and irreconcilable injury and damage unless Defendant is ordered to specifically perform all of its obligations required under the Collective Bargaining Agreement and the Trust Agreement, and is restrained from continuing to refuse to perform as thereunder required.

12. Defendant is delinquent to the Funds for the period of January 1, 2005, through September 30, 2007, in the amount of \$70,368.67.

13. Defendant's failure to pay is a violation of the Collective Bargaining Agreement and the Trust Agreement. Plaintiffs, therefore, seek enforcement of these provisions pursuant to Section 502(a)(3),(b)(ii) and Section 301(a) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C., Sec. 185(a).

WHEREFORE, Plaintiffs pray:

- (a) That judgment enter in favor of Plaintiffs and against Defendant in the amount of \$70,368.67.
- (b) That Defendant be compelled to account to Plaintiffs for contributions due as aforesaid and to pay to Plaintiffs the amount found due and owing in accordance with the applicable provisions of its Collective Bargaining Agreement.
- (c) That Plaintiffs be awarded their costs, including reasonable attorney's fees incurred in the prosecution of this action as provided in the Collective Bargaining Agreement and under the applicable provisions of ERISA, as amended.
- (d) That interest and/or liquidated damages be assessed against Defendant as provided in the Collective Bargaining Agreement and the applicable provisions of ERISA, as amended.
- (e) That Defendant be specifically ordered to furnish to Plaintiffs the required monthly contribution reports and payments due and to continue to perform all obligations on Defendant's part according the terms and conditions of its Collective Bargaining Agreement.
- (f) For such other and further relief as the Court may determine just and proper.

/s/ Robert B. Greenberg
Asher, Gittler, Greenfield & D'Alba, Ltd.
200 West Jackson Boulevard
Suite 1900
Chicago, Illinois 60606
(312) 263-1500
IL ARDC#: 01047558

United States District Court

NORTHERN DISTRICT OF ILLINOIS

Eastern Division

MASONRY INSTITUTE, BRICKLAYERS
LOCAL 21 PENSION FUND, DISTRICT
COUNCIL TRAINING CENTER FUND,
AND BRICKLAYERS AND STONE
MASONS OF ILLINOIS DISTRICT COUN-
CIL NO. 1 B.A.C. ANNUITY TRUST FUND,
Plaintiffs,

v.

CAPEK & SONS, INC., an Illinois Corpora-
tion,

Defendant.

TO: (Name and Address of Defendant)

CAPEK & SONS, INC., an Illinois Corporation
c/o: Thomas S. Leonard, Registered Agent
17103 Oak Park Avenue
Tinley Park, IL 60477

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 08CV3897

JUDGE: JUDGE LEINENWEBER

MAGISTRATE JUDGE COX

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

ROBERT B. GREENBERG, ESQ.
ASHER, GITTLER, GREENFIELD & D'ALBA, LTD.
200 West Jackson Boulevard
Suite 1900
Chicago, Illinois 60606
(312) 263-1500

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you
for the relief demanded in the complaint.

Michael W. Dobbins, Clerk

Paula Harrison

(By) DEPUTY CLERK

July 9, 2008

Date

BY DEPUTY CLERK



ClientCaseID: ROBERT
Law Firm ID: ASHER



CaseReturnDate: 8/10/08

Affidavit of Special Process Sever

UNITED STATES DISTRICT COURT

Case Number **08CV3897**

I, **ANNA CANOLE**

FIRST DULY SWORN ON OATH STATES THAT I AM OVER 18 YEARS OF AGE AND NOT A PARTY TO THIS SUIT AND IS A REGISTERED EMPLOYEE OF ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION PRIVATE DETECTIVE AGENCY #117-001292 STERN PROCESS & INVESTIGATION LLC 205 W. RANDOLPH ST. CHICAGO IL 60606

CORPORATE SERVICE

THAT I SERVED THE WITHIN **SUMMONS AND COMPLAINT**
ON THE WITHIN NAMED DEFENDANT **CAPEK & SONS, INC.**
PERSON SERVED **THOMAS LEONARD, REGISTERED AGENT**
BY LEAVING A COPY OF EACH WITH THE SAID DEFENDANT ON 7/29/08

That the sex, race and approximate age of the person whom I left the **SUMMONS AND COMPLAINT**
are as follow:

Sex	MALE	Race	WHITE	Age	40S
Height	6'0"	Build	AVERAGE	Hair	SALT & PEPPER

LOCATION OF SERVICE **17103 OAK PARK**
TINLEY PARK, IL, 60477

Date Of Service **7/29/08**

Time of Service **12:18 PM**

ANNA CANOLE

Special Process Sever

P.E.R.C.#129-203615

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statement are true and correct, except as to matters therein stated to be on information and belief and such matters the undersigned certifies as aforesaid that he/she verily believes same to be true.

Total: \$55.00

THE UNITED STATES DISTRICT COURT
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EASTERN DIVISION

MASONRY INSTITUTE, BRICKLAYERS)	
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)	
Plaintiffs,)	Judge Leinenweber
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)	Mag. Judge Cox
CAPEK & SONS, INC., an Illinois Corpora-)	
tion,)	
)	
Defendant.)	

AFFIDAVIT

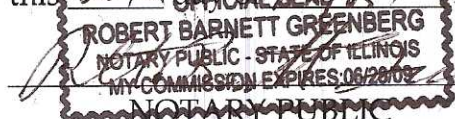
In accordance with 28 U.S.C. §1746, I, Cathy Bongiovanni, do hereby affirm and declare under penalty of perjury, that:

1. I am the Fund Coordinator for the Masonry Institute, Bricklayers Local 21 Pension Fund, and Bricklayers Local 21 of Illinois Apprenticeship and Training Program.
2. Based upon an examination of Defendant's reports and employee pay records that was performed under my direction and control, it was determined that the Defendant, CAPEK & SONS, INC., an Illinois Corporation, is delinquent in its contributions to the Plaintiff Funds for the period 1/1/2005 through 9/30/2007, in the amount of \$70,368.67, which amount includes accrued interest on the unpaid contributions.

I declare under penalty of perjury that the foregoing is true and correct.


CATHY BONGIOVANNI

Subscribed and Sworn to before me
this 20th day of August, 2008.



THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MASONRY INSTITUTE, BRICKLAYERS)	
LOCAL 21 PENSION FUND, DISTRICT)	
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tion,)	
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A F F I D A V I T

ROBERT B. GREENBERG, attorney for Plaintiffs, MASONRY INSTITUTE, BRICKLAYERS LOCAL 21 PENSION FUND, and BRICKLAYERS LOCAL 21 OF ILLINOIS APPRENTICESHIP AND TRAINING PROGRAM, et al., on oath and duly sworn, states:

1. That I am an attorney licensed to practice in the State of Illinois for 44 years and a member of the Federal Bar.

2. That I represent the Plaintiffs, MASONRY INSTITUTE, BRICKLAYERS LOCAL 21 PENSION FUND, and BRICKLAYERS LOCAL 21 OF ILLINOIS APPRENTICESHIP AND TRAINING PROGRAM, et al., and our billing rate is \$225.00 per hour.

3. That I have billed our clients a total of \$1,800.00 for legal services in the matter of CAPEK & SONS, INC., an Illinois Corporation.

4. That costs in the amount of \$405.00 for filing and service of Summons have been incurred by Plaintiffs.


ROBERT B. GREENBERG

Subscribed and Sworn to before me
this 3rd day of September, 2008.


NOTARY PUBLIC

